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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1000 OF 2005
IN
CHAMBER SUMMONS NO.438 OF 1995
IN
SUIT NO.842 OF 1980

Smt.Rabbunnisa Wd/o Haji Riyazali (since deceased) Abu Sufian Rahimulla Shaikh and others .. Plaintiffs

Versus

Haji Manoorali (since deceased) Smt.Azizunissa Wd/o Haji Mansoorali Abid Ali and others .. Defendants

And

Israrhussein Asgarali and others .. Applicants

None present for the Plaintiffs.

Mr.A.K.Hatik i/b.Nandlal Kothari & Sabir for Defendant Nos.1A to 1E.

Mr.C.D. Patel for Defendant Nos.2A and 2F.

Mr.R.V. Govilkar for Defendant No.6-Applicant.

Mr.Girish Desai i/b.Taher & Co. for Defendant Nos.7 and 8.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 27TH JUNE 2006

P.C.:

. The Applicant has filed the present Motion for setting aside the order dated 22nd November 2002 passed in Chamber Summons No.438 of 1995. By this order dated 22nd November 2002, the Court entertained the Chamber Summons filed by persons claiming to be the legal heirs of deceased Safunbi wd/o Haji Riyaz Ali and directed that they be joined as party Defendants.

2. By this order, the Court deleted Defendant No.6 as party to the proceedings and impleaded the Applicants in the Chamber Summons as Defendant No.6, instead of the present Applicants in the Motion.

3. According to the learned Advocate appearing for the Applicants in the present Notice of Motion, he was not heard when the Chamber Summons was allowed. He submits that the Chamber Summons was to be heard along with the the Suit which order was passed on 28th November 1996. It appears that the Chamber Summons was then heard before the Suit was finally heard and the Chamber Summons came to be disposed of. The Plaintiffs had also filed a similar application by filing a Review Petition which has already been dismissed. There are no reasons set out in the affidavit in support of the Motion as to why the Advocate for the Applicants was not present in Court when the Chamber Summons was heard. The order which is sought to be set aside is passed in 2002. The present Motion has been taken out on 31st March 2005.

4. In my view, the Applicants have not made out any case for setting aside the order passed in Chamber Summons No.438 of 1995.

5. Hence, Notice of Motion dismissed.